
EVALUATOR MANUAL TRANSMITTAL SHEET

Distribution:

☒ All Child Care Evaluator Manual Holders
☐ All Residential Care Evaluator Manual Holders
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Transmittal No.
09CCC-01

Date Issued

December 2009

Subject:**CHILD CARE CENTERS**

Amendment to Evaluator Manual sections 101157 and 101158

Reason For Change:

Evaluator Manual section 101157 and 101158 were updated to reflect statutory and regulatory authority.

Filing Instructions:

REMOVE – pages 4 through 14

INSERT – pages 4 through 14

Approved:

Original signed by Linda Inglett for

12/21/09

GLORIA MERK, Program Administrator
Statewide Child Care Program
Community Care Licensing Division

Date

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ARTICLE 2 LICENSING

101157

OPERATION WITHOUT A LICENSE

101157

(a)

POLICY

Education Code: Verification of Private School Instruction

Private schools for grades kindergarten and above must have a current affidavit on file with the Superintendent of Public Instruction in accordance with Education Code Section 33190 (see below.)

Education Code Section 33190: Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall between the first and 15th day of October of each year, commencing on October 1, 1967, file with the Superintendent of Public Instruction an affidavit or statement, under penalty of perjury, by the owner or other head setting forth the following information for the current year:

- (a) All names, whether real or fictitious, of the person, firm, association, partnership, or corporation under which it has done and is doing business.
- (b) The address, including city and street, of every place of doing business of the person, firm, association, partnership, or corporation within the State of California.
- (c) The address, including city and street, of the location of the records of the person, firm, association, partnership, or corporation, and the name and address, including city and street, of the custodian of such records.
- (d) The names and addresses, including city and street, of the directors, if any, and principal officers of the person, firm, association, partnership, or corporation.
- (e) The school enrollment, by grades, number of teachers, coeducational or enrollment limited to boys or girls and boarding facilities.
- (f) That the following records are maintained at the address state, and are true and accurate:
 - (1) The records required to be kept by Section 48222.
 - (2) The courses of study offered by the institution.
 - (3) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.
- (g) Criminal record summary information has been obtained pursuant to Section 44237. Whenever two or more private schools are under the effective control or supervision of a single administrative unit, such administrative unit may comply with the provisions of this section on behalf of each of the schools under its control or supervision by submitting one report.
- (h) Filing pursuant to this section shall not be interpreted to mean, and it shall be unlawful for any school to expressly or impliedly represent by any means whatsoever, that the State of California, the Superintendent of Public Instruction, the State Board of Education, the State Department of Education, or any division or bureau of the department, or any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course unless this is an actual fact.

The Superintendent of Public Instruction shall prepare and publish a list of private elementary and high schools to include the name and address of the school and the name of the school owner or administrator.

PROCEDURE

To verify that a private school has a current affidavit on file for kindergarten and/or above check with the local County Office of Education or visit the California Department of Education private school directory available online at <http://www.cde.ca.gov/sp/ps/rq/>.

POLICY*Certificate of Operation Issued by Department of Education*

Education Code Section 8262.5 (see below) allows the Superintendent of Public Instruction to issue a certificate of operation in contract transfer situations to California Department of Education-funded child care and development facilities when a certificate is necessary for continued operation and the receipt of state and federal child nutrition or child development funding. A completed license application must be submitted within 15 working days of the issuance of the certificate. The certificate of operation expires upon the issuance or denial of a license by the California Department of Social Services.

Education Code Section 8262.5. (a) In contract transfer situations in programs funded pursuant to this chapter, the Superintendent of Public Instruction may grant a certificate of operation to child care and development facilities pursuant to this section.

(b) For purposes of maintaining continuity of services to children and receipt of state and federal child nutrition and child development funding, the superintendent may grant a certificate of operation to any child care and development facility which meets all of the following conditions:

(1) The superintendent, or his or her designee, has visited the facility and verified, in writing, to the State Department of Social Services licensing agency that the facility has no deficiencies at the time of granting the certificate of operation which would endanger the physical health, mental health, safety, or welfare of the children.

(2) Without a certificate of operation in lieu of a license from the State Department of Social Services, the facility would be ineligible to receive state and federal child nutrition or child development funds.

(c) A facility issued a certificate of operation pursuant to this section shall be deemed to be operating under licensing standards for child care and development facilities specified by Chapters 3.4 (commencing with Section 1596.70), 3.5 (commencing with Section 1596.90), and 3.6 (commencing with Section 1597.30) of Division 2 of the Health and Safety Code and by Title 22 of the California Code of Regulations for the term specified on the certificate.

(d) A facility granted a certificate of operation shall submit a completed license application to the State Department of Social Services within 15 working days of the issuance of the certificate of operation. Failure to meet this requirement will result in the cancellation of the certificate of operation. The certificate of operation shall expire upon the issuance or denial of a license by the State Department of Social Services.

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OPERATION WITHOUT A LICENSE (Continued)

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PROCEDURE

Licensing staff are directed to honor these temporary certificates of operation and to allow the new contracting agency to submit an application for licensure to Community Care Licensing Division within 15 working days. If an application is not submitted within 15 days and the facility continues to operate, a Notice of Operation in Violation of Law (LIC 195) shall be issued. A copy of the notice shall also be sent to the California Department of Education, Child Development Division.

101158

EXEMPTION FROM LICENSURE

101158

POLICY

Health and Safety Code section 1596.792(a) – (n) lists 14 types of programs or facilities that are an exception to (also known as an exemption from) California Department of Social Services child day care licensure. NOTE: 1596.792(n) Crisis nursery as defined in subdivision (a) of Section 1516 shall remain an exception to licensure only until July 1, 2011 and as of that date is repealed. As operative on July 1, 2011, listed in Health and Safety Code section 1596.792(a) – (m) there are 13 types of programs or facilities that are an exception to licensure

Regulation section 101158(a)(8)(A) and (B) further enumerates the conditions that are to be met for the public and private schools that operate a program before and/or after school for school-age children.

Health and Safety Code section 1596.793 provides that licensure does not apply to recreation programs conducted for children by the Girl Scouts, Boy Scouts, Boy Club, Girls Club, or Camp Fire, or similar organizations as determined by regulations of the department. At this time there are no regulations that define any similar organizations. However, child day care programs conducted by these organizations are subject to California Department of Social Services licensure.

PROCEDURE

Upon a determination by the Licensing Program Analyst that a facility or program meets an exception as defined in Statute or in regulation, there is no requirement for licensure by California Department of Social Services.

OTHER EXEMPTIONS FROM CALIFORNIA DEPARTMENT OF SOCIAL SERVICES LICENSURE**POLICY**

There are some separate Education Code and Health and Safety Code sections which provide for exemptions from California Department of Social Services licensure as follows:

POLICY*Organized Camps*

Organized camps are not subject to regulation by California Department of Social Services.

Health and Safety Code section 18897: (a) "Organized camp" means a site with program and facilities established for the primary purposes of providing an outdoor group living experience with social, spiritual, educational, or recreational objectives, for five days or more during one or more seasons of the year.

(b) The term "organized camp" does not include a motel, tourist camp, trailer park, resort, hunting camp, auto court, labor camp, penal or correctional camp and does not include a child care institution or home-finding agency.

(c) The term "organized camp" also does not include any charitable or recreational organization that complies with the rules and regulations for recreational trailer parks.

18897.1. "Camper" means any person in an organized camp on a fee or nonfee basis who is a participant in the regular program and training of an organized camp, and who may take on duties relating to such program and training.

18897.2. (a) Except as provided in Section 18930, the Director of Public Health shall adopt, in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, rules and regulations establishing minimum standards for organized camps and regulating the operation of organized camps that the director determines are necessary to protect the health and safety of the campers. Organized camps also shall comply with the building standards of the jurisdiction in which the camp is located, to the extent that those standards are not contrary to, or inconsistent with, the building standards adopted by the Director of Public Health. The Director of Public Health shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The State Department of Public Health shall enforce building standards published in the State Building Standards Code relating to organized camps and such other rules and regulations adopted by such director pursuant to the provisions of this section as the director determines are necessary to protect the health and safety of campers. In adopting building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 and in adopting such other rules and regulations pursuant to the provisions of this section, the Director of Public Health shall consider the Camp Standards of the American Camping Association.

(b) The Director of Public Health shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 and shall adopt such other rules and regulations pursuant to the provisions of this section establishing minimum standards for intermittent short-term organized camps operated by a city or a county as the director deems necessary to protect the health and safety of

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EXEMPTION FROM LICENSURE (Continued)

101158

POLICY (Continued)

campers. For purposes of this subdivision, "intermittent short-term organized camps" means a site for camping by any group of people for a period of not more than 72 consecutive hours for that group.

18897.3. Except as provided in Section 18930, the State Fire Marshal shall adopt minimum fire safety regulations for organized camps in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The State Fire Marshal shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of this division for the purposes described in this section.

18897.4. Every local health officer shall enforce within his or her jurisdiction the building standards published in the State Building Standards Code relating to organized camps and the other rules and regulations adopted by the Director of Public Health pursuant to Section 18897.2.

18897.5. The building standards published in the State Building Standards Code relating to fire and panic safety and the other regulations adopted by the State Fire Marshal pursuant to Section 18897.3 shall be enforced in the same manner as is prescribed by Sections 13145, 13146, and 13146.5 of this code for the enforcement of building standards published in the State Building Standards Code relating to fire and panic safety and the other regulations that have been formally adopted by the State Fire Marshal for the prevention of fire or for the protection of life and property against fire or panic.

18897.6. Organized camps shall not be subject to regulation by any state agency other than the State Department of Public Health, California regional water quality control boards, the State Water Resources Control Board, and the State Fire Marshal; provided, that this section shall not affect the authority of the Department of Industrial Relations to regulate the wages or hours of employees of organized camps and this section shall not be construed to limit the application of building standards published in the State Building Standards Code to structures in organized camps.

18897.7. No organized camp shall be operated in this state unless each site or location in which the camp operates satisfies the minimum standards for organized camps prescribed in building standards published in the State Building Standards Code relating to organized camps, and in other rules and regulations adopted by the Director of Public Health and the State Fire Marshal. Any violation of this section or of any building standard published in the State Building Standards Code relating to organized camps or any other rule or regulation adopted pursuant to Section 18897.2 or 18897.3 in the operation of organized camps is a misdemeanor.

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EXEMPTION FROM LICENSURE (Continued)

101158

POLICY (Continued)

California Code of Regulations Title 17 § 30703. Notice of Intention to Operate.

(a) At least 30 days prior to the operation of any camp in any calendar year, written notice shall be sent by the site operator to the local health officer of the city, county, or city and county in which the camp is located, setting forth the name, location and mailing address of the person or agency that owns the camp, the name and address of the person or agency proposing to operate the camp and the proposed dates of occupancy during that calendar year. Camps which operate year-round shall provide only an initial notice of operation.

(b) Written notice shall be sent to the local health officer at least 30 days prior to:

(1) Construction of any new camp,

(2) Any major expansion of physical facilities or

(3) Any changes to items of information required in (a) above.

(c) The local health officer shall acknowledge receipt in writing, within seven days, of said notices and shall, at the same time, send a copy to the State Fire Marshal.

To read more about organized camps visit the California Department of Public Health link below:

<http://www.cdph.ca.gov/HealthInfo/envirohealth/water/Documents/RecHealth/ExcerptsofLawsRegulationsOrganizedCamps2008.pdf>

PROCEDURE

Request the “camp” provide documented verification from the local health officer that the facility is an organized camp. If the facility fails to provide verification from the local health office that it is an organized camp, the licensing program analyst will determine if it meets any other Statutory exception or exemption from California Department of Social Services licensure, or is otherwise required to apply for child care licensure.

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EXEMPTION FROM LICENSURE (Continued)

101158

POLICY*Exemption from Licensure provided in Education Code:
After School Education and Safety Program*

Education Code Section 8482: There is hereby established the After School Education and Safety Program. All references to it by its prior name, the Before and After School Learning and Safe Neighborhoods Partnerships Program, in this article and other state law shall now identify it by its new name. The purpose of this program is to create incentives for establishing locally driven before and after school enrichment programs both during schooldays and summer, intersession, or vacation days that partner public schools and communities to provide academic and literacy support and safe, constructive alternatives for youth. The term public school includes charter schools.

8484.3. (a) Programs established pursuant to this article shall not be required to comply with the requirements of other provisions of this chapter or requirements set forth in Chapter 19 of Division 1 of Title 5 of the California Code of Regulations.

(b) Notwithstanding any other provision of law or regulation, a program operated by a city, county, or nonprofit organization pursuant to this article may operate for up to 30 hours per week without obtaining a license or special permit under Chapter 3.4 (commencing with Section 1596.70) or Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code.

POLICY*Indian Child Welfare Act*

The Indian Child Welfare Act of 1978 (Public Law 95608) requires that any facility located off an Indian reservation and providing out-of-home care and supervision be licensed as a community care or child care facility. This applies even if the facility is “licensed” by the Indian tribe or an Indian organization. Community Care Licensing Division has no jurisdiction over the licensure of out-of-home care facilities located on an Indian reservation.

The Indian Child Welfare Act requires that an Indian child be placed in a facility that:

1. Represents the least-restrictive setting;
2. Most nearly approximates a family; and
3. Meets the special needs of the child, if any exist.

Maximize program flexibility through waivers and exceptions to achieve licensure of a range of Indian facilities that substantially comply with licensing standards and do not present life-threatening health and safety risks. (Refer to Evaluator Manual Reference Material Section 2-5000.)

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EXEMPTION FROM LICENSURE (Continued)

101158

POLICY (Continued)

Facilities located on federal government property, including military bases, are exempt from licensure because state laws do not apply on most federal lands. This exemption also applies to facilities located on Indian reservations.

PROCEDURE

When facilities located on federal government properties or Indian reservations require and/or request licensure, an application for a license may be processed if the person in charge of operations on the property (e.g., the military base commander, the director, etc.)--or, in the case of Indian reservations, the Indian Tribal Council--agrees to cooperate with all licensing procedures and abide by licensing rules and regulations. This agreement must be obtained on the standard agreement form LIC 996 or LIC 996A, as appropriate.

Additionally, a written agreement from the applicant may be obtained and reflected on the standard applicant agreement form LIC 997 or LIC 997A, as appropriate. The agreements should be signed by the Regional Manager.

Upon completion of an agreement with an Indian Tribal Council, the Bureau of Indian Affairs should be notified. A copy of the agreement should be sent to:

U.S. Department of Interior
Sacramento Area
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825
Attention: Area Director

The following information is provided as a result of questions posed related to the use of the agreement forms and should clarify any immediate questions related to this process:

1. The LIC 997 or LIC 997A is to be completed in addition to the agreement with the federal entity or Indian Tribal Council (LIC 996 or 996A). This serves as a reminder to the licensee of his/her responsibilities for licensure.
2. The processing of administrative actions should be handled in the same manner as for any other facility. No special procedures are necessary or required. But if an administrative action is initiated, the federal or Indian entity should be informed immediately to elicit their cooperation.
3. This agreement does not limit the authority of federal personnel to investigate abuse complaints. Rather, this agreement provides assurances that licensing representatives are allowed to also conduct investigations when the complaint involves a licensed facility.

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EXEMPTION FROM LICENSURE (Continued)

101158

PROCEDURE (Continued)

4. If a facility is issued an order for temporary suspension or revocation and the facility fails to cease operation, the federal entity must ensure that all operations cease immediately. If the federal entity fails to cooperate, the agreement can be terminated and the license deemed invalid.

If it is not clear whether a facility meets an exception or exemption to licensure, discuss with your Licensing Program Manager and Regional Manager. A request for policy determination may be submitted through the Assistant Program Administrator.

101161 LIMITATIONS ON CAPACITY AND AMBULATORY STATUS

101161

(a) POLICY

If a licensed child care center (e.g., Head Start) wants to mainstream children with disabilities from a county-/school-operated program into the center, the center must include the mainstreamed children in its capacity. This would be an increase-in-capacity request and, as such, a new fire clearance would be needed, as well as compliance with all other requirements as set forth in Section 101185.

If children with disabilities **only “mainstream” during outdoor activities**, and there is adequate outdoor space for both groups (75 square feet per child), technically the center needs to include the children with disabilities in its capacity. However, in order to allow “mainstreaming” to occur without placing unnecessary requirements on the licensee (e.g., requiring increased indoor activity space when children with disabilities will not be using that space, etc.), the licensee may submit a plan to the Department that details its proposal for ensuring that health and safety standards are met (e.g., adequate space, supervision, etc.). The Department will review and approve these plans on a case-by-case basis.

Policy regarding bedridden children is as follows:

1. The Uniform Building Code, Section 403, defines a bedridden person as “a person confined to a bed, requiring assistance in turning or unable to independently transfer to and from bed, and unable to leave a building unassisted during emergency conditions.” This does not apply to infants ages 0 to 2 years of age.
 2. Bedridden children shall be allowed in child care centers as long as the center does not provide medical care to the child. No bedridden child shall be admitted to a child care center unless the center has secured a bedridden fire clearance.
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101161 LIMITATIONS ON CAPACITY AND AMBULATORY STATUS**101161**

(Continued)

(b)

POLICY

The Department is authorized to make determinations as to the ambulatory status of children. (See Section 101152n.(1) and Health and Safety Code Section 13131.)

As required by Section 101220, the ambulatory status of children shall be recorded in their medical assessment. However, the Department may require a reassessment if it believes that the previous assessment of a child's ambulatory status is incorrect or that the assessment does not reflect the current ambulatory status of the child.

To be considered ambulatory, a child must meet all of the following criteria:

1. The child is not dependent upon a mechanical aid such as a walker, crutches or wheelchair.
2. The child is able to respond both physically and mentally to an audible or visual signal or oral instruction and to evacuate the building unassisted in an emergency situation.